

1  
2  
3  
4  
5  
6  
7 FLORENTINA MAZZONE-URIE,  
8 Plaintiff,  
9 v.  
10 ONEWEST BANK FSB, et al.,  
11 Defendants.

Case No. 21-cv-06075-EMC

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

Docket No. 65

12  
13  
14 Plaintiff Florentina Mazzone-Urie initiated this foreclosure-related action back in August  
15 2021. Plaintiff is an elderly woman. Her husband owned certain real property and applied for a  
16 loan modification in 2009. He died in 2012, allegedly without getting a decision on the  
17 application for a modification. Plaintiff was the beneficiary of the estate. Since her husband's  
18 death, Plaintiff has been trying to get modification of the loan. As of date, the property has not  
19 been foreclosed on, although foreclosure proceedings were initiated in 2021.

20 Plaintiff has sued the following entities: (1) OneWest Bank, FSB; (2) Ocwen Financial  
21 Corporation; and (3) PHH Mortgage. Plaintiff asserts various causes of action against Defendants,  
22 including claims for violation of the Homeowner Bill of Rights ("HBOR"). Now pending before  
23 the Court is a motion to dismiss filed by one of the defendants: PHH Mortgage Corporation  
24 ("PHH"). In the caption of its motion, PHH states that it is the successor by merger to Ocwen  
25 Loan Servicing, LLC ("Ocwen") and was sued erroneously as the entities listed in (2) and (3).  
26 There is nothing to indicate to the contrary.

27 Having considered the papers submitted, the Court hereby **GRANTS** PHH's motion to  
28 dismiss. The Court also **DENIES** Plaintiff's motion for an extension of time to find counsel to

1 represent her.<sup>1</sup> *See* Docket No. 94 (motion for extension).

2           **I.        FACTUAL & PROCEDURAL BACKGROUND**

3           A.        Complaint

4           In her complaint, Plaintiff alleges as follows.

5           Plaintiff owns certain real property located in Pacifica, California. *See* Compl. ¶¶ 5, 12.  
6           There is a deed of trust on the property, reflecting a \$600,000 loan made by Indymac Bank FSB.  
7           The loan was originally taken out by Plaintiff's husband (before she married him) and his daughter  
8           in 2006. *See* Compl. ¶ 12.

9           In 2009, Plaintiff married her husband. *See* Compl. ¶ 15. That same year, the husband  
10          applied for a loan modification. *See* Compl. ¶ 15.

11          In 2010, the daughter relinquished her interest in the real property so that the husband was  
12          the sole owner. *See* Compl. ¶ 16.

13          The husband never heard back on his loan modification application. In March 2012, he  
14          died. *See* Compl. ¶¶ 17-18. Plaintiff was named the beneficiary of the estate. *See* Compl. ¶ 18.

15          There are three different defendant entities: OneWest Bank, FSB; Ocwen Financial  
16          Corporation; and PHH Mortgage. It appears that OneWest became the servicer of the loan related  
17          to the real property in July 2008. *See, e.g.*, Compl. ¶ 14. It appears that Ocwen later became the  
18          servicer of the loan. *See, e.g.*, Compl. ¶ 19. In 2019, PHH, which is a subsidiary of Ocwen, took

20          

---

21          <sup>1</sup> In September 2024, the Court continued the hearing on the pending motion to dismiss because  
22          Plaintiff represented that she might be able to get counsel to represent her. *See* Docket No. 86  
23          (minutes). Plaintiff subsequently asked for additional time to find counsel, and the Court gave her  
24          an extension. *See* Docket No. 91 (order). Plaintiff then moved for a second extension of time; the  
25          Court granted her relief again. *See* Docket No. 92 (order). Under that order, Plaintiff had until  
26          November 7, 2024, to find counsel to represent her. On November 6, 2024, Plaintiff filed a third  
27          motion asking for an extension of time.

28          Plaintiff has now had approximately two months to find counsel. The Court cannot  
29          indefinitely grant her extensions. This lawsuit needs to move forward, especially as multiple  
30          attempts at settlement have not been successful and Plaintiff's bankruptcy case has now been  
31          dismissed.

32          To the extent Plaintiff asks for leave to file an opposition to the motion to dismiss in her  
33          pro se capacity, that request is also denied. The Court has already given Plaintiff two different  
34          opportunities to file an opposition to dismiss, but she failed to do so.

1 over servicing. *See* Compl. ¶ 21.

2 As noted above, in March 2012, Plaintiff's husband died. At the time of his death,  
3 OneWest was still the servicer. It gave Plaintiff a forbearance period for the loan. Subsequently,  
4 Ocwen became the servicer and advised Plaintiff not to send any payment on the loan until the  
5 loan was modified. *See* Compl. ¶ 19. Plaintiff submitted documents required to modify the loan  
6 and was told that she would be the successor to the loan. *See* Compl. ¶ 20.

7 Apparently, nothing happened for some seven years. In 2019, PHH (as noted above, a  
8 subsidiary of Ocwen) took over the servicing of the loan. It told Plaintiff that she would need to  
9 start the process of applying for a loan modification over again. *See* Compl. ¶ 21. In June 2019,  
10 Plaintiff sent documents to support an application, including the husband's death certificate,  
11 documents from probate, the application, and a hardship letter. She spoke to a PHH representative  
12 who confirmed that the documents were received and was told "to continue withholding payments  
13 while the loan modification was under review." Compl. ¶¶ 22-24.

14 For some two years, Plaintiff did not hear back on her loan modification application.  
15 Because she had not heard from PHH, Plaintiff reached out, in February 2021, to an organization  
16 called Housing & Economic Rights Advocates ("HERA"). In March 2021, a HERA staff attorney  
17 assisted Plaintiff in sending in documents to support the loan modification application. In the  
18 following months, the attorney contacted PHH several times to check on the status of the  
19 application; each time, the attorney was told something new (*e.g.*, that there would be a decision  
20 by the end of the day, that documents were still missing, that the decision was still pending). *See*  
21 Compl. ¶¶ 26-31.

22 At some point, Plaintiff received a notice of trustee's sale. The sale was first scheduled for  
23 July 23, 2021. *See* Compl. ¶ 25.

24 On July 8, 2021, *i.e.*, about two weeks before the trustee's sale date, PHH informed  
25 Plaintiff that the loan modification application had been "denied because in order for her [*i.e.*,  
26 Plaintiff] to assume the loan, the loan would have to be current." Compl. ¶ 32. At some point, the  
27 trustee's sale was postponed to August 13, 2021. *See* Compl. ¶ 25; Plaintiff Decl. ¶ 15. There is  
28 no dispute that, currently, the property still has not been foreclosed upon.

1       B.     Litigation

2             Plaintiff initiated this lawsuit on August 6, 2021, after her loan modification application  
3              was denied. On the same day, Plaintiff filed her first ex parte application for a TRO, seeking to  
4              restrain the foreclosure sale. PHH filed an opposition to the motion, but no hearing was held  
5              because it postponed the sale, and thus Plaintiff withdrew the motion. *See* Docket No. 13 (notice).  
6              Plaintiff did not thereafter file a motion for a preliminary injunction. Nor is there any indication  
7              that she appealed the July 8 decision denying her loan modification application. However, the  
8              parties did engage in settlement discussions.

9              Presumably because settlement discussions were not successful, PHH set a new trustee's  
10             sale for October 8, 2021. Plaintiff then filed a second motion for a TRO on October 5, 2021, *i.e.*,  
11             just days before the sale. *See* Docket No. 17 (motion). A hearing was never held on the motion  
12             because the parties stipulated to Plaintiff withdrawing the motion. *See* Docket No. 24 (stipulation  
13             and order).

14             In May 2022, counsel for Plaintiff filed a motion to withdraw due to medical reasons. The  
15             Court permitted the withdrawal in July 2022, and, since then, Plaintiff has since been litigating  
16             this case pro se. *See* Docket No. 28 (order, filed on 7/1/2022). Since Plaintiff has been  
17             representing herself, no real litigation has taken place in the case. There was an attempt at  
18             settlement, with Plaintiff having the assistance of counsel through the Federal Pro Bono Project  
19             (limited to representation for mediation purposes), but that attempt was not successful. *See*  
20             Docket No. 59 (order, filed on 3/1/2024) (terminating limited scope representation). The Court  
21             thereafter referred the parties to a settlement conference with a magistrate judge (with no  
22             representation for Plaintiff).

23             In April 2024, following a scheduling conference with Judge Cisneros (the magistrate  
24             judge assigned for the settlement conference), PHH filed the pending motion to dismiss. Plaintiff  
25             did not file an opposition to the motion and instead, in May 2014, initiated a bankruptcy  
26             proceeding (Case No. 24-30350 (N.D. Cal. Bankr. Ct.)). PHH was listed as a creditor in the  
27             bankruptcy proceeding. This led Judge Cisneros to cancel the settlement conference. *See* Docket  
28             No. 68 (order). The Court temporarily vacated the hearing on the motion to dismiss in light of the

1 bankruptcy filing and asked for the parties' input as to how that proceeding impacted the instant  
2 case. *See* Docket No. 69 (order). PHH filed a response; Plaintiff did not.

3 Subsequently, the Court reset the motion to dismiss for hearing in September 2024 but  
4 gave Plaintiff a second opportunity to file an opposition to the motion to dismiss. The Court also  
5 gave an opportunity for the "bankruptcy players" (*i.e.*, the trustee, Plaintiff's bankruptcy counsel,  
6 and the bankruptcy court) to file statements if they had any views as to how the case at bar might  
7 impact the bankruptcy proceeding or vice-versa, whether the hearing on the motion to dismiss  
8 should proceed in this case, and whether the bankruptcy trustee would have an interest in  
9 participating in this case or a settlement conference under the auspices of this Court. *See* Docket  
10 No. 73 (order). The Court started the settlement process again with Judge Cisneros.

11 Thereafter, Plaintiff failed to file an opposition to the motion to dismiss. Plaintiff's  
12 bankruptcy counsel, however, did file a declaration "to advise [the Court] of the actions being  
13 taken in the bankruptcy court to address the claim of the defendant." Docket No. 79 (Voisenat  
14 Decl. ¶ 3). The declaration indicated that Plaintiff's bankruptcy case was referred to the  
15 bankruptcy court's Mortgage Modification Mediation Program in July 2024. *See* Docket No. 79  
16 (Voisenat Decl. ¶ 5 & Ex. A). Plaintiff's bankruptcy counsel cited to one case in support of his  
17 assertion that a "non-debtor's filing of a motion to dismiss a complaint initiated by the debtor is a  
18 violation of the automatic stay." Docket No. 79 (Voisenat Decl. ¶ 8).

19 A settlement conference was held before Judge Cisneros in early September 2024, but the  
20 case did not settle. *See* Docket No. 87 (minutes). In mid-September, the Court held the hearing  
21 on PHH's pending motion to dismiss but continued it after Plaintiff represented she might be able  
22 to locate counsel to represent her. *See* Docket No. 86 (minutes). Plaintiff has not been successful  
23 in finding counsel. *See* note 1, *supra*. In early November 2024 and again in mid-November 2024,  
24 Judge Cisneros conducted additional settlement conferences, but still the case did not settle. *See*  
25 Docket No. 96 (minutes).

26 On November 18, 2024, the bankruptcy court dismissed the bankruptcy case after the  
27 trustee filed a motion to dismiss. The trustee had moved to dismiss based on Plaintiff's failure to  
28 attend multiple creditors' meetings. The bankruptcy court's dismissal order noted that Plaintiff

1 failed to oppose the trustee’s motion to dismiss.

2                   **II.        DISCUSSION**

3           A.        Legal Standard

4           To overcome a Rule 12(b)(6) motion to dismiss after the Supreme Court’s decisions in  
5           *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007),  
6           a plaintiff’s “factual allegations [in the complaint] ‘must . . . suggest that the claim has at least a  
7           plausible chance of success.’” *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014). The court  
8           “accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light  
9           most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d  
10          1025, 1031 (9th Cir. 2008). But “allegations in a complaint . . . may not simply recite the  
11          elements of a cause of action [and] must contain sufficient allegations of underlying facts to give  
12          fair notice and to enable the opposing party to defend itself effectively.” *Levitt*, 765 F.3d at 1135  
13          (internal quotation marks omitted). “A claim has facial plausibility when the plaintiff pleads  
14          factual content that allows the court to draw the reasonable inference that the defendant is liable  
15          for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. “The plausibility standard is not akin to a  
16          probability requirement, but it asks for more than a sheer possibility that a defendant has acted  
17          unlawfully.” *Id.* (internal quotation marks omitted).

18           B.        Plaintiff’s Causes of Action

19           Plaintiff has asserted seven causes of action against Defendants, including PHH.

20           (1) Violation of 12 C.F.R. § 1024.41. This regulation<sup>2</sup> is related to loss mitigation  
21          procedures. *See, e.g.*, 12 C.F.R. § 1024.41(b)(2)(i) (providing that, “[i]f a servicer  
22          receives a loss mitigation application 45 days or more before a foreclosure sale, a  
23          servicer shall” review the application to determine if it is complete and notify the  
24          borrower in writing within 5 days as to whether the application is complete or  
25          incomplete); *id.* § 1024.41(c)(1) (providing that, “if a servicer receives a complete  
26          loss mitigation application more than 37 days before a foreclosure sale, then within  
27          

28           

---

<sup>2</sup> The regulation is a part of the Real Estate Settlement Procedures Act (“RESPA”).

1           30 days the servicer shall “[e]valuate the borrower for all loss mitigation options  
2           available to the borrower” and “[p]rovide the borrower with a notice in writing [as  
3           to] which loss mitigation options, if any, it will offer to the borrower”); *id.* §  
4           1024.41(g) (providing that, “[i]f a borrower submits a complete loss mitigation  
5           application . . . more than 37 days before a foreclosure sale, a servicer shall not  
6           move for foreclosure judgment or order of sale, or conduct a foreclosure sale,  
7           unless,” *e.g.*, the servicer notifies the borrower that “the borrower is not eligible for  
8           any loss mitigation option” and the appeal process is over).

9           (2) Violation of California Civil Code § 2923.6. This is part of the HBOR and bars  
10           dual tracking. *See, e.g.*, Cal. Civ. Code § 2923.6(c) (providing that, “[i]f a  
11           borrower submits a complete application for a first lien modification . . . at least  
12           five business days before a scheduled foreclosure sale, a mortgage servicer . . . or  
13           authorized agent shall not record a notice of default or notice of sale, or conduct a  
14           trustee’s sale, while the complete first lien loan modification application is still  
15           pending”).

16           (3) Violation of California Civil Code § 2923.7. This is also part of the HBOR and  
17           relates to a single point of contact (“SPOC”). *See, e.g.*, *id.* § 2923.7(a) (providing  
18           that, “[w]hen a borrower requests a foreclosure prevention alternative, the mortgage  
19           service shall promptly establish a single point of contact and provide to the  
20           borrower one or more direct means of communication with the single point of  
21           contact”).

22           (4) Negligence.

23           (5) Breach of contract.

24           (6) Elder financial abuse.

25           (7) Violation of California Business & Professions Code § 17200.

26           C. Plaintiff’s Failure to Oppose the Motion to Dismiss

27           As an initial matter, the Court notes that Plaintiff has had two opportunities to oppose  
28           PHH’s motion to dismiss but failed to do so. Because she failed to oppose, the Court could grant

1 arguably the motion to dismiss on that basis alone. In the interest of justice, however, the Court  
2 still considers the merits of the arguments made in PHH's motion.

3 D. RESPA Claim

4 In her complaint, Plaintiff alleges that Defendants violated three provisions in RESPA:

- 5 • **12 C.F.R. § 1024.41(b)(2)(i)**, which states that, “[i]f a servicer receives a loss  
6 mitigation application 45 days or more before a foreclosure sale, a servicer shall”  
7 review the application to determine if it is complete and notify the borrower in  
8 writing within 5 days as to whether the application is complete or incomplete. 12  
9 C.F.R. § 1024.41(b)(2)(i). According to Plaintiff, this provision was violated  
10 because she “never received a written notice until 15 days before her scheduled  
11 Trustee Sale.” Compl. ¶ 38.
- 12 • **Section 1024.41(c)(1)**, which provides that, “if a servicer receives a complete loss  
13 mitigation application more than 37 days before a foreclosure sale, then within 30  
14 days the servicer shall “[e]valuate the borrower for all loss mitigation options  
15 available to the borrower” and “[p]rovide the borrower with a notice in writing [as  
16 to] which loss mitigation options, if any, it will offer to the borrower.” 12 C.F.R. §  
17 1024.41(c)(1). According to Plaintiff, this provision was violated because she  
18 “never received a description of other loss mitigation options she may be available  
19 for nor a list of steps [s]he should take to be considered for those options.” Compl.  
20 ¶ 38.
- 21 • **Section 1024.41(g)**, which provides that, “[i]f a borrower submits a complete loss  
22 mitigation application . . . more than 37 days before a foreclosure sale, a servicer  
23 shall not move for foreclosure judgment or order of sale, or conduct a foreclosure  
24 sale, unless,” *e.g.*, the servicer notifies the borrower that “the borrower is not  
25 eligible for any loss mitigation option” and the appeal process is over. 12 C.F.R. §  
26 1024.41(g). According to Plaintiff, this provision was violated because Defendants  
27 “proceed[ed] with foreclosure prior to Plaintiff’s being denied” for loss mitigation,  
28 “making a possible appeal,” or “reject[ing] . . . all possible loss mitigation options.”

1 Compl. ¶ 39.

2 PHH argues first that the RESPA claim lacks merit because Plaintiff complains about not  
3 getting notices “after 12 years,” Compl. ¶ 38, but the regulation did not even take effect until  
4 January 2014. This argument is not persuasive. To be sure, Plaintiff does suggest she has a claim  
5 because her husband first applied for loan modification back in 2009; however, as alleged, she  
6 also applied for loan modification in 2019.

7 PHH argues next that, even if there is no timing problem, Plaintiff has failed to state a  
8 claim for relief. Here, the Court agrees.

9 One of Plaintiff’s RESPA theories is that Defendants (including PHH) violated §  
10 1024.41(c)(1) which provides that, “if a servicer receives a complete loss mitigation application  
11 more than 37 days before a foreclosure sale, then within 30 days the servicer shall “[e]valuate the  
12 borrower for all loss mitigation options available to the borrower” and “[p]rovide the borrower  
13 with a notice in writing [as to] which loss mitigation options, if any, it will offer to the borrower.”  
14 But there is no indication that PHH did not evaluate Plaintiff for all loss mitigation options  
15 available to her. Also, PHH did provide notice to Plaintiff in writing that it was not offering her  
16 any loss mitigation options. As alleged, on July 8, 2021, *i.e.*, about two weeks before the trustee’s  
17 sale date, PHH informed Plaintiff that the loan modification application had been “denied because  
18 in order for her [*i.e.*, Plaintiff] to assume the loan, the loan would have to be current.” Compl. ¶  
19 32. In any event, the prior initiation of a foreclosure sale is now moot.

20 Another RESPA theory is that Defendants violated § 1024.41(g), which provides that, “[i]f  
21 a borrower submits a complete loss mitigation application . . . more than 37 days before a  
22 foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a  
23 foreclosure sale, unless,” *e.g.*, the servicer notifies the borrower that “the borrower is not eligible  
24 for any loss mitigation option” and the appeal process is over. But here, as noted above, Plaintiff  
25 was told on July 8, 2021, that she was not eligible for a loss mitigation option. It is not clear how  
26 long the appeal process is, but there is no indication that Plaintiff did appeal. Furthermore, even  
27 though a foreclosure sale was set at one point for October 8, 2021, ultimately, no foreclosure has  
28 taken place and thus, as noted above, is moot.

1 E. Dual Tracking Claim (Cal. Civ. Code § 2923.6)

2 As noted above, the dual tracking claim is based on § 2923.6(c) which provides in relevant  
3 part as follows: “[i]f a borrower submits a complete application for a first lien modification . . . at  
4 least five business days before a scheduled foreclosure sale, a mortgage servicer . . . or authorized  
5 agent shall not record a notice of default or notice of sale, or conduct a trustee’s sale, while the  
6 complete first lien loan modification application is still pending.”

7 PHH contends the dual tracking claim lacks merit because Plaintiff is not a “borrower”  
8 under the statute; that was her husband. *See* Cal. Civ. Code 2920.5(c)(1) (defining “borrower” as  
9 “any natural person who is a mortgagor or trustor and who is potentially eligible for any federal,  
10 state, or proprietary foreclosure prevention alternative program offered by, or through, his or her  
11 mortgage servicer”). PHH adds that any rights Plaintiff had as a successor in interest have been  
12 repealed. PHH is referring to California Civil Code § 2920.7, which was repealed in January  
13 2020. Prior to repeal, § 2920.7 provided that, upon being notified by a purported “successor in  
14 interest that a borrower has died, and where that claimant is not a party to the loan or promissory  
15 note, a mortgage servicer shall not record a notice of default pursuant to Section 2924 until the  
16 mortgage service” requests “reasonable documentation of the death of the borrower” and  
17 “reasonable documentation . . . demonstrating the ownership interest of that claimant in the real  
18 property.” Cal. Civ. Code § 2920.7(a) (2019). Section 2920.7 also provided that “[b]eing a  
19 successor in interest . . . does not impose an affirmative duty on a mortgage servicer to alter any  
20 obligation the mortgager has to provide a loan modification to the successor in interest. If a  
21 successor in interest assumes the loan, he or she may be required to otherwise qualify for available  
22 foreclosure prevention alternatives offered by the mortgage servicer.” *Id.* § 2920.7(b)(3) (2019).  
23 In addition, the statute provided that the mortgage servicer had to allow the successor in interest to  
24 “[a]pply to assume the deceased borrower’s loan” or to “simultaneously apply to assume the loan  
25 and for a foreclosure prevention alternative.” *Id.* § 2920.7(d) (2019). And the statute provided  
26 that, if a trustee’s deed upon sale has not been recorded, a successor in interest could seek  
27 injunctive relief to enjoin a material violation of, *e.g.*, § 2920.7(a), (b), and (d). If so, then the  
28 successor in interest could seek damages. *See id.* § 2920.7(e) (2019).

1       Section 2920.7 clearly provided a successor in interest with rights. But, as PHH contends,  
2 the repeal of that provision precludes Plaintiff's HBOR claim for dual tracking.

3       Moreover, PHH correctly argues that, for Plaintiff to get relief under the HBOR, she must  
4 show a material violation of the statute. *See Cal. Civ. Code § 2924.12(a)(1)* (providing that, if a  
5 trustee's deed upon sale has not been recorded, then a borrower may bring an action for injunctive  
6 relief to enjoin a material violation of, *inter alia*, § 2923.6). The dual tracking statute is intended  
7 to prevent a foreclosure from taking place while a loan modification application is still pending.  
8 Here, the loan modification application was rejected on July 8, 2021. It does not appear that  
9 Plaintiff appealed the denial. Thus, based on the allegations of the complaint, there would be not  
10 be a bar to foreclosure because no application is pending anymore.

11      F.     SPOC Claim (Cal. Civ. Code § 2923.7)

12      Plaintiff contends that the extended delays she faced with her loan modification application  
13 was a result of the failure to appoint a single point of contact ("SPOC"). The SPOC claim also  
14 lacks merit because of the repeal of a successor in interest's rights.

15      In addition, as above, PHH validly asserts that Plaintiff has failed to show a material  
16 violation. Even assuming that there was a failure to appoint a SPOC (it is not clear that the delays  
17 were attributable to such), at this point, Plaintiff has had her loan modification application denied.

18      G.     Negligence Claim

19      Like her statutory/regulatory claims, Plaintiff's negligence also fails. "The elements of a  
20 negligence cause of action are the existence of a legal duty of care, breach of that duty, and  
21 proximate cause resulting in injury." *Castellon v. U.S. Bancorp*, 220 Cal. App. 4th 994, 998  
22 (2013). Here, the allegations in the complaint do not support a duty of care. To be sure,  
23 California Civil Code § 1714(a) provides that "everyone is responsible . . . for an injury  
24 occasioned to another by his or her want of ordinary skill in the management of his or her  
25 property or person." Cal. Civ. Code § 1714(a). But, "[e]ven if California law provides that a legal  
26 duty of care runs between a plaintiff and a defendant, courts have the power and obligation to  
27 examine whether considerations of public policy warrant *limiting* that duty." *Shalgoun v. North*  
28 *Los Angeles County Regional Center, Inc.*, 99 Cal. App. 5th 929, 946 (2024) (emphasis added).

1 And in *Sheen v. Wells Fargo Bank, N.A.*, 12 Cal. 5th 905 (2022), the California Supreme Court  
2 held that a lender does not owe a borrower a tort duty to process, review, and respond carefully  
3 and completely to a borrower’s loan modification application (*i.e.*, “so as to avoid causing [a]  
4 plaintiff pure monetary loss through a lack of care in handling his applications”). *Id.* at 919.

5 In her complaint, Plaintiff suggests that Defendants had duties to her pursuant to the  
6 HBOR – *i.e.*, §§ 2923.6 and 2923.7. *See* Compl. ¶ 67 (alleging that these statutes “set forth  
7 specific duties a beneficiary and loan servicer must uphold for a loan in default and a borrower  
8 seeking a foreclosure prevention alternative or loss mitigation option”). But there do not appear to  
9 be any authorities suggesting that a plaintiff could have a viable negligence claim based on those  
10 statutes if a direct claim based on the statutes was not viable – *i.e.*, a negligence claim should not  
11 be used as an end-run around the statutes.

12 H. Breach of Contract Claim

13 The breach of contract claim is also subject to dismissal. It does not appear that Plaintiff  
14 was ever a party to any contract with Defendants, including the deed of trust. *See* Compl. ¶ 80  
15 (alleging that the contact was the deed of trust). To be sure, the deed of trust suggests that a  
16 successor in interest can stand in the shoes of the borrower, but this is only in limited  
17 circumstances. *See* RJD, Ex. 1 (Deed of Trust § 13) (“Subject to the provisions of Section 18, any  
18 Successor in Interest of Borrower who assumes Borrower’s obligations under this Security  
19 Instrument in writing, and is *approved* by Lender, shall obtain all of Borrower’s rights and  
20 benefits under this Security Interest.”) (emphasis added).

21 It also is unclear how PHH allegedly breached the deed of trust. In the complaint, Plaintiff  
22 suggests that there was a breach because Defendants violated her rights under the HBOR. *See*  
23 Compl. ¶ 83. (“Defendant breached the contract when it violated Plaintiff’s rights under the  
24 Homeowners Bills of Rights, and violated California Law.”). But a breach of the HBOR is not a  
25 breach of contract. She fails to identify another basis for her claim of breach of contract.

26 I. Elder Abuse Claim

27 The elder abuse claim also is not viable. Under California Welfare & Institutions Code §  
28 15610.30,

1            “[f]inancial abuse” of an elder or dependent adult occurs when a  
2            person or entity does any of the following:

- 3            (1)       Takes, secretes, appropriates, obtains, or retains real or  
4            personal property of an elder or dependent adult for a  
5            wrongful use or with intent to defraud, or both.  
6            (2)       Assists in taking, secreting, appropriating, obtaining, or  
7            retaining real or personal property of an elder or dependent  
8            adult for a wrongful use or with intent to defraud, or both.  
9            (3)       Takes, secretes, appropriates, obtains, or retains, or assists in  
10          taking, secreting, appropriating, obtaining, or retaining, real  
11          or personal property of an elder or dependent adult by undue  
12          influence, as defined in Section 15610.70.

13          Cal. Wel. & Inst. Code § 15610.30(a). “A person or entity shall be deemed to have taken,  
14          secreted, appropriated, obtained, or retained property for a wrongful use if, among other things,  
15          the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or  
16          entity knew or should have known that this conduct is likely to be harmful to the elder or  
17          dependent adult.” *Id.* § 15610.30(b).

18          Plaintiff claims elder abuse because

19          Defendants systematically obscured its [sic] actions and motivations  
20          to gain ownership of the Property. Defendants spent years leading  
21          on Plaintiff that her loan modification was under review only to be  
22          told 15 days before the Trustee Sale that she was not allowed to  
23          assume the loan because it was not current. Clearly, Defendants  
24          were never intending to allow Plaintiff to assume the loan, and were  
25          biding time to strip the Property of its equity.

26          Compl., 6th Cause of Action, ¶ 4.

27          But it is not clear how Plaintiff can claim elder abuse when nothing has actually been taken  
28          from her as of yet. As PHH points out, the foreclosure has not happened.

29          Furthermore, it is not clear that there is a risk of elder abuse. Nothing suggests an intent to  
30          defraud by PHH. To the extent Plaintiff is asserting wrongful use, that is not a tenable position  
31          given that the loan has been in default for years and the amount owed appears to be substantial.  
32          See RJN, Ex. 6 (notice of default, dated 5/31/2019) (stating that the unpaid balance is  
33          approximately \$411,000 as of June 2019). Also, nothing suggests PHH is obligated to modify the  
34          loan at issue, and PHH issued the denial of the loan modification application back on July 8, 2021.

1 J. Section 17200 Claim

2 The § 17200 claim is essentially a derivative claim. Because the claims above all lack  
3 merit as pled, the § 17200 claim also fails.

4 **III. CONCLUSION**

5 For the foregoing reasons, the Court grants PHH's motion to dismiss in its entirety. The  
6 Court, however, shall give Plaintiff leave to amend her complaint because it is not clear that  
7 amendment would be futile. Plaintiff's amended complaint shall be filed by January 3, 2025.  
8 PHH shall then have until January 31, 2025, to file a response to the amended pleading. **Plaintiff**  
9 **is advised that, if she fails to file an amended complaint by the date specified, then her case**  
10 **will be dismissed with prejudice.** Also, Plaintiff is advised that the Court will not entertain any  
11 additional requests for extension of time if the only basis for the request is more time is needed to  
12 find counsel. Of course, if Plaintiff finds counsel to represent her, they may make an appearance.

13 This order disposes of Docket No. 65.

14  
15 **IT IS SO ORDERED.**

16  
17 Dated: November 25, 2024

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



---

EDWARD M. CHEN  
United States District Judge